IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1384 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGUBHAI LIMJIBHAI PATEL

Versus

RAVIDATT S PANDIT (DELETED)

Appearance:

MR DR BHATT for Appellant.
Respondent No. 1 - Deleted.
No one has appeared on behalf of Respondent No. 2
MR DEEPAK M SHAH for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

#. The respondent No.1 is already deleted as per Court's order dated 15.10.1987 in Civil Application No. 1814 of 1987. Mr.D.M.Shah is present on behalf of respondent No.3 i.e. The Oriental Fire & General Insurance Co.Ltd.

#. This is claimant's First Appeal under section 110-A of the Motor Vehicle Act, challenging the judgment and order dated 08.02.1985 passed by Motor Accident Claims Tribunal, Valsad at Navsari in M.V.Claim Petition No. 231 of 1983, whereby the amount of Rs.22,000/- has been awarded to the claimant with proportionate costs and interest at the rate of 6% p.a. from the date of the application till realisation. Rest of the claim has been dismissed.

#. The appellant herein had filed claim before the Motor Accident Claims Tribunal, Valsad at Navsari alleging that while he was a pillion rider on a Motorcycle driven by one Ramanbhai Surjibhai Patel from Sisodra to Navsari on 27.04.1983 at 10.30 a.m. when the Motorcycle was to come over to National Highway No.8 nearby the said village Sisodra when they came to the road, a Truck No.R.N.B.1775 came upon them which was being driven by the opponent no.1 and knocked them down. The claimant received serious injuries and filed a claim petition for Rs.1,50,000/- before the Motor Accident Claims Tribunal, Valsad at Navsari. Upon notice being issued by the Tribunal, reply at Exh.22 was filed by the Insurance Company - Respondent No.3, stating that the Driver of the Truck was not negligent and that the accident was solely because of the fault of the Motorcyclist and that the claim was exaggerated. On behalf of the opponent no.2, i.e. owner of the Truck, no reply had been filed. The opponent no.1 i.e. Driver of the Truck did not file any reply. On the basis of the pleadings of the parties, the Tribunal framed the following issues and the findings recorded by the Tribunal for each of the issue is mentioned against the issue as under :

1	Whether the applicant proves that he was injured by the rash and negligent act of opponent No.1 in driving Motor Truck No.R.N.B.1775 on 27.04.1983 ?	In the Affirmative
2	Whether the Opponent No.2 is vicariously liable?	In the Affirmative.

3	Whether the applicant is entitled to compensation from all the opponents, if yes, what should be awarded as compensation ?	(i) Rs.22,000/- (ii) From all the three Opponents.	
4	What award and against whom ?	As per Award.	

#. It has come on record that with regard to this accident Criminal Case No.3351 of 1983 was filed in the Court of Judicial Magistrate, First Class, Navsari. In the said Criminal Case opponent no.1, who was Driver of the Truck in question pleaded guilty to the charge of rash and negligent driving and that he had suffered the penalty of fine in that Criminal Case vide certified copy of the judgment Exh.76. We have gone through the impugned judgment and the available record as also the deposition of P.W. 1 to 5 and D.W. 1 to 3 and written statement of opponent no.3 i.e. Insurance Company. On the basis of the evidence and the material available on record and also looking to the facts and circumstances of the present case, we find that the Motor Accident Claims Tribunal has rightly found the case to be of composite negligence and that the opponent no.1 was rash and negligent in his driving and was answerable to the claimant. The finding on issue no.1, therefore, does not warrant any interference. Whereas the opponent no.2 was admittedly the owner of the Truck as is evident from the certificate of insurance, Exh.97, the opponent no.1 being driver of the opponent no.2, the opponent no.2 has been rightly held to be liable and finding of issue no.2 also does not warrant any interference. Coming to the finding on issue no.3, we find on the basis of the deposition made by Dr.Kapadia that in his cross-examination Dr.Kapadia had admitted that the complication which developed in the left arm of the claimant was not attributable to any injuries out of this accident. He has categorically stated at Exh.112 while confirming the injuries mentioned in the certificate Exh.113, that on 13.05.1983 when he was giving an intravenus injection to the claimant in his left arm, in process the claimant had moved his hand and the needle of the injection had entered into an artery. The doctor himself could not take note of the change of the position of the needle and the drug `steriod' was injected and the result was that immediately after the injection the claimant developed arterial spasm. The remedy was to immediately operate and to remove the thrombosis from the artery. The

doctors at Civil Hospital were making preparations for this purpose and were ready to operate the claimant but the claimant was reported to be LAMA (Left Against Medical Advice). The factual position is that the claimant was first brought to the Civil Hospital, Navsari and because of his serious condition he was referred to the Civil Hospital, Surat. The claimant remained at Civil Hospital, Surat from 27.04.1983 to 13.05.1983 for the treatment of compound fracture of Tibia and Fibula of the right hand and there was a linear fracture of right parietal bone upto temporal region. Besides this he had also injuries on his face and at different places. The case of the claimant in the deposition Exh.98, that he had sustained injuries above the left elbow was not borne out from the medical certificate, Exh.113, and it is very clear that this injury with regard to the left elbow precipitated on 13.05.1983 itself as narrated above i.e. the date on which the claimant left the Surat Hospital against the medical advice and this complication on the left elbow on account of which he had to suffer the amputation was created in the process of the treatment of the injuries which he had sustained as a result of the accident. When the drug got injected at the left arm as stated by Dr.Kapadia at Exh.112, the operation was to be immediately carried out in the particular area, the left limb, otherwise it would develop necrosis and would soon degenerate into gangrene and in that case the only remedy would have been the amputation. However, the fact remains that on 13.05.1983 the claimant himself chose to leave against medical advice and he was then taken to Asaktashram Hospital where Dr.A.S.Patel carried out the amputation on 21.05.1983. Dr.Patel has been examined at Exh.114. Dr.Mahadik had attempted to restart the blood circulation by operating upon the artery, but he could not succeed and that particular portion of the left arm had become dead and when the said Dr.Patel had examined on 17.05.1983 he had already noticed the sign of gangrene for which he was sought to be operated for amputation. The Tribunal has therefore rightly come to the conclusion that the claimant could not claim for this permanent disabelement from the opponents as this amputation of the left limb was not the result of any tortous act on the part of the opponent. Hence, we do not find that the reasoning given by the Tribunal in this regard is wrong or otherwise not tenable. On the contrary , the Tribunal has given detailed reasons in support of its view in paragraphs 18 to 25 holding that the injury leading to amputation was not connected with the accident and the claimant was not entitled to compensation with regard to this injury.

#. The Tribunal has noted in paragraph 26 that the claimant had compound fracture of Tibia-Fibula and for that purpose he must have required the medicines as a part of the treatment even after 13.05.1983. Out of the 50 bills submitted by the claimant only 3 bills were upto 13.05.1983. The total amount of the said bills was for Rs.6549.65 including the bill of Rs.2915.25 charged by Asaktashram Hospital for the care of compound fracture of Tibia-Fibula. The claimant must have required the medicines evenafter 13.05.1983 while the amount of three bills upto 13.05.1983 was Rs.134.40 only. The Tribunal has observed that it was too meagre for the injury like a compound fracture and taking into consideration the totality of the facts the Tribunal has granted lump-sum amount in this regard as Rs.3500/- against the medical expenses for nutrition diet, transport and other incidental expenses including the expenses for undergoing operation for removal of the plate from the right leg. As per deposition of the claimant himself the major parts of his expenses and visits for follow-up treatment are because of amputation and therefore the claim of Rs.20,000/- by way of expenses as claimed was not accepted.

#. The evidence is available to show that the applicant was working as Primary Teacher at the time of incident and his monthly salary at that time was Rs.967/and as a result of this incident there was no effect whatsoever to impair in his earning capacity. The claimant also remained absent from his duty for more than eight months. Ofcourse the leave record produced by him at Exh.105 shows his absence from duty and that he had to seek the commutted leave for 198 days. The Tribunal has determined that the compensation is to be recovered at the rate of Rs.967/- p.m. The Tribunal has awarded a sum of Rs.22,000/- and the rest of his claim is dismissed. The finding as recorded by the Tribunal in paragraphs 28 and 29 in the impugned order does not warrant any interference by this Court and for that purpose the Tribunal has thus found that all the opponents were jontly and severally liable for the amount awarded. The finding arrived at by the Motor Accident Claims Tribunal is quite in order. Thus, we do not find any substance in this appeal. The claimant has been awarded Rs.22,000/together with proportionate costs and interest at the rate of 6% p.a. from the date of the application and we do not find any basis to interfere with the order by which the rest of the claim has been refused. The appeal is hereby dismissed in the facts and circumstances of the case. No order as to costs.

Sd/- Sd/-
(M.R.Calla, J) (D.A.Mehta,J)

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m.m.bhatt